

REMARKS/ARGUMENTS

35 U.S.C. §102

On page 2 of the Office Action, paragraph 3, claims 6, 9, and 16 to 19 were rejected under 35 U.S.C. §102 (b) as being anticipated by Pockat et al. (US 5023121) as evidenced by Genske et al. (US 5407751).

Applicants respectfully traverse the rejection of these claims to the extent this rejection is applied to the claims as now presented.

Pockat et al. teach up to 10% polypropylene in the sealant blend (column 6, lines 16 to 22) wherein the polypropylene is a discrete polymer forming part of the three component blend also including polybutene and a third polymeric material such as EVA (column 5, lines 29 to column 6, line 7.) If the polypropylene is supplied as a commercial polypropylene/ polybutene blend, along with an additional polymer such as EVA, the commercial blend is taught as comprising 80% PB and 20% PP (column 5, lines 15 to 28). The ten examples of Table 1 each appear to show a major portion of a material such as EVA blended with the PB/PP blend. At an 80/20 blend as disclosed above, the highest percentage of the PB/PP blend in the sealant formulation is 22% (Examples 3, 4, and 7 of Table 1). This would yield a polypropylene content of a bit over 4%.

Claims 6 and 16 have been amended to raise the minimum percentage of polypropylene in the sealant blend of the presently claimed invention from 10% to 20% by weight of the sealant layer.

Genske et al. is referred to in the Office Action to support the notion of an easy peel lidstock for microwaveable structures. Genske et al. are however distinct from the present invention in that they teach at column 4, lines 61 to 66 that

The composition of the container 16 and the outer sealant layer 20 are preferably substantially similar to one another so that the heat sealing creates a sealing interface 46 between the two layers so that those two layers function as a single layer in the area of the seal.

This teaches away from the dissimilar sealants of the top and bottom webs respectively of the presently claimed invention.

The Genske reference also teaches that the film is particularly adaptable to being retorted and is also capable of being peelably opened both before and after cooking (column 3, lines 9 to 12). The present invention, in contrast, is designed to provide a package that is essentially non-peelable before microwaving, but peelable after microwaving.

Applicants also refer to column 5, lines 40 to 45, where Genske et al. indicate that

[i]t is desirable that the total composition of outer sealant layer 20 be predominately PP, that is, greater than 50% PP. This will insure that it adheres sufficiently to a polypropylene based tray or film that is used to form the package.

In contrast, the sealant layer of the bottom web of the presently claimed package has at a maximum 40 weight percent polypropylene.

Also, the peel mechanism of Genske et al. is fundamentally different from that of Pockat et al. In Genske et al., peeling occurs, not between the sealant layer of a bottom web and the sealant layer of a top web, but rather by adhesive failure *within* the top web itself.

Pockat et al., and Genske et al., therefore teach distinct, and inconsistent, mechanisms for providing a peelable package.

Applicants respectfully submit that these amended claims are thus novel over Pockat et al. (US 5023121).

The Examiner's attention is also drawn to new claim 23, where a package like that of claim 16 is recited, but in which the bottom web *consists essentially of* the recited blend of EVA and polypropylene. In contrast, Pockat et al. requires a significant amount of polybutene in their three component blend.

35 U.S.C. §103(a)

On page 3 of the Office Action, at paragraph 6, claims 6 to 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Simon (US 4,925,684) in view of Fisher et al. (US 4,911,938).

Applicants respectfully traverse the rejection of these claims to the extent this rejection is applied to the claims as now presented.

In Applicants' earlier response, they took the position that neither Fisher et al. nor Simon teach a vacuum skin package. Figures 6 and 7, and the corresponding text in column 7, make it clear that the packaging material of Fisher et al. is wrapped around a food product, as shown in Figure 6. Upon heating, the food product expands, filling the interior of the package to result in the article of Figure 7. The result is not a vacuum skin package. It does not appear that the embodiments of Figures 5 and 6 are even vacuum packages, since the packaging material appears to be simply wrapped around the contained product, with sealing of the edges. Applicants maintain this position.

The present Office Action, at paragraph 13 on pages 5 to 6, gives no patentable weight to this argument on the basis that claim 6 does not provide any limitation directed

to a vacuum skin package. Claim 6 has now been amended in several places to emphasize that what is being claimed is a vacuum skin package.

Applicants respectfully submit that claims 6 to 9 as amended are patentably distinct from and not rendered obvious over Simon in view of Fisher et al.

On page 3 of the Office Action, at paragraph 7, claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Simon (US 4,925,684) in view of Fisher et al. (US 4,911,938), and further in view of Sugimoto (JP 2001-310443).

Applicants respectfully traverse the rejection of these claims to the extent this rejection is applied to the claims as now presented.

For this rejection, Applicants rely on the above comments: Sugimoto, like Simon and Fisher et al., does not teach a vacuum skin package.

On page 4 of the Office Action, at paragraph 8, claims 10 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) as applied to claims 6-9, 16-19, further in view of Shibata et al. (US 4,429,079).

On page 4 of the Office Action, at paragraph 10, claims 21 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) as applied to claims 6-9, 16-19, further in view of [Applicants' note: the Office Action did not complete this sentence, but from the context, it is assumed that the official notice discussed in this paragraph of the Office Action is what is referred to].

Applicants respectfully traverse the rejection of the claims to the extent these rejections are applied to the claims as now presented.

For both of these rejections, Applicants rely on the above comments with respect to Pockat et al. and Genske.

Applicants advise that the invention embodied in the present application has received wide spread industry recognition. Attached is a two page summary of the awards received by the Applicants' assignee for the Simple Steps™ package (assignee's commercial identification of the package which is the subject of this application).

The applicants respectfully ask the Examiner to consider the above discussion, and to allow the claims as now presented. The Commissioner is authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 07-1765.

Respectfully submitted,

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